



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

July 29, 2004

Ref: 8ENF-L

CERTIFIED

MAIL

RETURN RECEIPT REQUESTED

Joe Vujovich
Lee Poole
Moonlight Basin Ranch, Inc.
Moonlight Basin Ranch Limited Partnership
P.O. Box 1369
Ennis, MT 59729

Re: Administrative Complaint and Notice of
Opportunity for Hearing
Docket No. **CWA-08-2004-0057**

Dear Mr. Vujovich and Mr. Poole:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") that the U.S. Environmental Protection Agency, Region 8 ("EPA") is issuing to Moonlight Basin Ranch, Inc. and Moonlight Basin Ranch Limited Partnership under the authority of section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). In the Complaint, EPA alleges that you have violated sections 301 and 404 of the Act, 33 U.S.C. §§ 1311 and 1344, and their implementing regulations by discharging dredged or fill material into waters of the United States without a permit. The violations that EPA is alleging are specifically set out in the Complaint. The Complaint proposes that a penalty of \$59,000.00 be assessed against you for these violations.

By law, you have the right to request a hearing regarding the violations alleged in the Complaint and the appropriateness of the proposed administrative civil penalty. Please pay particular attention to the section of the Complaint entitled "Notice of Opportunity to Request a Hearing." If you wish to request a hearing, you must file within thirty (30) days of your receipt of the enclosed Complaint, a written Answer with the EPA Regional Hearing Clerk at the address set forth in the Complaint. The written request must follow the requirements of the Consolidated Rules of Practice at 40 C.F.R. Part 22, a copy of which is enclosed. Note that should you fail to request a hearing within thirty (30) days of your receipt of the Complaint, you will waive your right to such a hearing and the proposed civil penalty may be assessed against you without further proceedings.



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If you wish to settle this matter without further legal action, you may waive your right to a hearing and, within thirty days of receipt of this letter, pay the proposed penalty to "Treasurer, United States of America," at the address set forth in the Complaint.

Enclosed is a copy of "U.S. EPA Small Business Resources," which can assist you with complying with federal environmental laws. Also enclosed is an SEC Disclosure Notice.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference. If such a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement signed by you and the delegated official in EPA Region 8. The issuance of such a consent agreement shall constitute a waiver by you of your right to a hearing on, and to a judicial appeal of, the agreed upon civil penalty.

A request for an informal conference with EPA does not extend the thirty day period within which you must request or waive your right to a hearing, and the two procedures can be pursued simultaneously.

You have the right to be represented by an attorney at any stage in the proceedings, including any informal discussions with EPA, but it is not required. If you wish to discuss settlement or technical questions, please contact Kristine Knutson, Environmental Scientist, at (406) 457-5021. Legal questions, including any communications from an attorney, should be directed to Wendy Silver, Enforcement Attorney, at (303) 312-6637.

We urge your prompt attention to this matter.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

Enclosures:

1. Administrative Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Civil Practice (40 C.F.R. Part 22)
3. U.S. EPA Small Business Resources Information Sheet
4. SEC Disclosure Notice

cc: Jan Sensibaugh, Montana Department of Environmental Quality
Allan Steinle, U.S. Army Corps of Engineers

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	ADMINISTRATIVE
)	COMPLAINT AND
Moonlight Basin Ranch, Inc. and)	NOTICE OF OPPORTUNITY
Moonlight Basin Ranch Limited Partnership)	FOR HEARING
P.O. Box 1369)	Proceeding to Assess Class II
Ennis, MT 59729,)	Administrative Penalty Under
)	Clean Water Act, Section 309(g)
Respondents.)	
<hr/>)	Docket No, CWA-08-2004-0057

This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to section 309(g) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13. Section 309(g) of the Act authorizes the Administrator of the United States Environmental Protection Agency (“EPA”) to make findings and to assess civil penalties for violations of section 301 of the CWA, 33 U.S.C. § 1311. This proceeding is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22, a copy of which accompanies this Complaint.

Complainant in this action is the Assistant Regional Administrator for the Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8, who has been properly delegated the authority to issue this Complaint.

STATUTORY FRAMEWORK

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), among other things, prohibits the discharge of any pollutant into waters of the United States except as in compliance with a permit

issued pursuant to section 404 of the Act, 33 U.S.C. § 1344.

2. Section 404(a) of the Act, 33 U.S.C. § 1344(a), grants the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (“Corps” or “COE”), the authority to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into navigable waters.

3. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of a Class II civil penalty of up to \$11,000.00 per day for each violation of section 301 of the Act, 33 U.S.C. § 1311, up to a maximum of \$157,500.00.

GENERAL ALLEGATIONS

4. Respondent Moonlight Basin Ranch, Inc. (MBRI) is a Montana corporation incorporated under the laws of the State of Ohio in 1992. MBRI has offices located at 117 East Main Street, Ennis, Montana.

5. Respondent Moonlight Basin Ranch Limited Partnership (MBRLP) is a Montana corporation incorporated under the laws of the State of Ohio in 1992. MBRLP has offices located at 117 East Main Street, Ennis, Montana.

6. At all relevant times, Respondents MBRI and MBRLP owned, controlled, and/or operated approximately twenty-five thousand acres of property containing wetlands and other waters of the United States in Madison County, Montana. These waters are specifically located in portions of sections 14, 23 and 24, Township 6 South, Range 2 East (hereafter, the “Site”).

7. On May 2, 2002, personnel from the Corps met with representatives of Respondents and their technical consultants to explain the CWA regulatory process.

8. On July 23, 2002, the COE and EPA conducted a field inspection at the Site and met with

Respondents to explain CWA regulations. During the field inspection, the COE and EPA discovered that there had been unauthorized discharges of dredged or fill material associated with the installation of three culverts associated with an access road. The fill affected approximately 0.08 acres of jurisdictional waters of the United States.

9. On August 1, 2002, the COE issued an after-the-fact Nationwide Permit 39 for the unauthorized fills discovered on July 23, 2002.

10. On August 29, 2002, the COE authorized three culverts for ski runs under Nationwide Permit 42 (0.04 acres) and a temporary wetland fill for an access road during timber harvest under Nationwide 32.

11. Later in 2002, Respondents filled or caused to be filled an additional 0.233 acres of jurisdictional wetlands and streams during road and ski run construction at nineteen different locations at the Site without a Department of the Army permit, as required by section 404 of the CWA, 33 U.S.C. § 1344. Respondents reported those fills to the COE in the summer of 2003.

12. The work referenced in paragraph 11 above was performed using common earthmoving equipment including, but not limited to, a tracked excavator, a dozer, and a skidder.

13. On October 2, 2003, EPA and the COE visited the Site and viewed many of the unauthorized fills.

14. On October 7, 2003, the COE issued a Cease and Desist Order to Respondents notifying them that the additional 0.233 acres of discharges that occurred during the fall of 2002 were not authorized.

15. Respondents are each a “person” within the meaning of the definition set forth in section 502(5) of the Act, 33 U.S.C. § 1362(5).

16. The tracked excavator, dozer, and skidder referenced in paragraph 12, above, are each a “point source” within the meaning of the definition set forth in section 502(14) of the Act, 33 U.S.C. § 1362(14).
17. The dredged and fill material discharged in the course of activities described in paragraph 11, above, constitutes a “pollutant” within the meaning of the definition set forth in section 502(6) of the Act, 33 U.S.C. § 1362(6).
18. Respondents’ activities as described in paragraph 11, above, constitute the “discharge of a pollutant” within the meaning of the definition set forth in section 502(12) of the Act, 33 U.S.C. § 1362(12).
19. The wetlands and streams described in paragraph 11, above, are all tributary to the Middle Fork of the West Fork of the Gallatin River, which merges into the Gallatin River which is a tributary to the Missouri River, an interstate water; all are “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a), and therefore “navigable waters” within the meaning of the definition set forth in section 502(7) of the Act, 33 U.S.C. § 1362(7).

DESCRIPTION OF VIOLATION

20. Respondents did not apply for or receive a section 404 permit from the Corps authorizing the discharges of dredged or fill material described in paragraph 11, above, prior to their discharge, as required under sections 301 and 404 of the Act, 33 U.S.C. §§ 1311 and 1344.
21. The discharges of pollutants from a point source by Respondents into waters of the United States described in Paragraph 11, above, were carried out without the required permit issued by the Corps pursuant to section 404 of the Act, 33 U.S.C. § 1344, and, therefore, constitute violations of sections 301 and 404 of the Act, 33 U.S.C. §§ 1311 and 1344.

22. Respondents are subject to the provisions of the Act, 33 U.S.C. § 1251 et seq., including section 309(g) of the Act, 33 U.S.C. § 1319(g).

23. Pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), EPA has consulted with Jan Sensibaugh, Director, Montana Department of Environmental Quality, regarding assessment of this administrative penalty by furnishing a copy of this complaint and inviting her to comment on behalf of the State of Montana.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing allegations and pursuant to the authority of section 309(g) of the Act, 33 U.S.C. §1319(g), EPA Region 8 hereby proposes to issue a Final Order Assessing Administrative Penalties to Respondents assessing a penalty in the amount of \$59,000.00.

The proposed penalty amount was determined by EPA after taking into account all factors identified in section 309(g)(3) of the Act, 33 U.S.C. § 1319(g). These factors include: the nature, circumstances, extent and gravity of the violation or violations; Respondents' prior compliance history and degree of culpability for the cited violations; any economic benefit or savings accruing to Respondents by virtue of the violations; Respondents' ability to pay the proposed penalty, and other matters as justice may require. EPA may issue the Final Order Assessing Administrative Penalties thirty days after Respondents' receipt of this Notice, unless Respondents, within that time, request a hearing on this Notice pursuant to the following section.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.15(c), Respondents have the right to request a hearing in this matter. If Respondents (1) contest any material fact upon which the Complaint is based, (2) contend that the amount of

penalty proposed in the Complaint is inappropriate, or (3) contend that they are entitled to judgment as a matter of law, they must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty days after service of the Complaint.

Respondents' answer must (1) clearly admit, deny, or explain each of the factual allegations contained in the Complaint, (2) state the circumstances or arguments which are alleged to constitute grounds of defense, (3) state the facts intended to be placed at issue, (4) state the basis for opposing any proposed relief, and (5) specifically request a hearing, if desired. 40 C.F.R. § 22.15(b). Failure to admit, deny, or explain any factual allegation contained in the Complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(c).

Respondents' answer, an original and one copy, must be filed with:

Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
999 18th Street, Suite 300
Denver, Colorado 80202-2466

A copy of your answer and all other documents filed in this action must be served on:

Wendy Silver
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, CO 80202-2466

Be aware that should Respondents request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment.

IF RESPONDENTS FAIL TO REQUEST A HEARING, THEY WILL WAIVE THEIR RIGHT TO CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENTS FAIL TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE FULL PENALTY PROPOSED IN THE COMPLAINT.

Should Respondents not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional 30 days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If Respondents do not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondents may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within sixty (60) days of such receipt. Penalty payment must be made by certified or cashier's check payable to "Treasurer, the United States of America," and remitted to:

U.S. Environmental Protection Agency
Regional Hearing Clerk
P.O. Box 360859
Pittsburgh, PA 15251

Copies of the check shall be sent to:

Kristine Knutson
U.S. Environmental Protection Agency
Region 8, Montana Office
10 West 15th Street, Suite 3200
Helena, MT 59626-0096

and

Wendy Silver
U.S. Environmental Protection Agency, 8ENF-L
999 18th Street, Suite 300
Denver, CO 80202-2466

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

Payment of the penalty in this manner shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' right to a hearing in this matter.

Neither assessment nor payment of an administrative civil penalty pursuant to section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondents' continuing obligation to comply with the Clean Water Act or any other federal, state, or local law or regulations and any separate Compliance Order issued under section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out

above. The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms will be expressed in a written consent agreement signed by the parties and incorporated into a final order by the Regional Judicial Officer. 40 C.F.R. § 22.18. To explore the possibility of settlement in this matter, contact Wendy Silver, Enforcement Attorney, at the address above. Ms. Silver can also be reached at (303) 312-6637.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Date: 7/26/04

SIGNED _____
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, to:

Lee Poole
Joe Vujovich
Moonlight Basin Ranch, Inc.
Moonlight Basin Ranch Limited Partnership
P.O. Box 1369
Ennis, MT 59729

Certified Return Receipt No. 70032260 0001 7790 8154

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

Jan Sensibaugh, Director
Montana Department of Environmental Quality
P.O. Box 200901
Bldg. 1520 E. 6th Ave.
Helena, MT 59620-0901

Certified Return Receipt No. 7003 2260 0001 7790 8147

The original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency
999 18th Street, Suite 300 (8RC)
Denver, CO 80202-2466

Date: 7/29/04 Judith M. McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JULY 29, 2004.